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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

BALTIMORE & O. R. CO. v. LEE.

Sept. 24, 1906.

[55 S. E. 1.]

Trial—Instructions—Submission of Matters Not in Issue.—In an action for a personal injury negligently inflicted, an instruction embodying the duty defendant owed to others than plaintiff was erroneous because not in issue.

[Ed. Note.—For cases in point, see vol. 46, Cent. Dig. Trial, §§ 587-595.]

Railroads—Injuries to Licensees—Contributory Negligence—Last Clear Chance.—A brakeman in the employ of S. railway was in a coach on a delivery track in a yard of the company. A crew of B. railway was engaged in backing a freight train on the delivery track to couple the train to the coach. The brakeman stepped onto the coach platform for the purpose of alighting. The jar caused by the train striking the coach caused him to fall. There was no appreciable interval of time between his going onto the platform and the train striking the coach. Held, that as the crew had no opportunity to exercise any degree of care to avoid the consequences of the brakeman's negligent act in going onto the platform, the doctrine of the last clear chance was inapplicable.

Trial—Exceptions to Instructions—Sufficiency.—Where a party objected to an instruction, and made the objection the subject of a bill of exceptions, the failure to object to a subsequent instruction embodying the same principle did not impair his right to rely on the exception taken.

BREEDEN et ux. v. PEALE.

Sept. 24, 1906.

[55 S. E. 2.]

Attachment—Actions in Which Attachment Is Authorized—Motion for Judgment by Notice.—Code 1887, § 2959 [Va. Code 1904, p. 1558], providing for the issuing of an attachment at the time of bringing any action for the recovery of personal property, a debt or damages for breach of contract, applies to a motion for judgment by notice.

Lis Pendens.—Code 1887, § 3566 [Va. Code 1904, p. 1903] provides that no lis pendens or attachment shall affect a bona fide purchaser without notice under a memorandum, etc., be left with the clerk

of the court. Held, that where land was sold by verbal contract, and the vendee sold it and a deed was made from the original vendor to the purchaser from the vendee, but the same was not recorded until two days after there was left with the clerk a *lis pendens* in an attachment suit against the land as that of the original vendor, the one purchasing from his vendee had constructive notice.

Attachment—Grounds—Fraudulent Conveyances.—Code 1887, § 2959 [Va. Code 1904, p. 1568], makes it ground for attachment that defendant is about to dispose of his property with intent to hinder, delay, or defraud creditors. A landowner who was indebted on a partnership account to his late partner, promised to give him a deed of trust on his property, but he failed to do so, and thereafter sold it, he having made no secret of the fact that he was endeavoring to sell. He devoted the proceeds of the sale to the payment of other creditors. Held, that the facts did not authorize the issuance of an attachment.

[Ed. Note.—For cases in point, see vol. 5, Cent. Dig. Attachment, §§ 96, 101.]

SHEARER *v.* TAYLOR, Sergeant.

Sept. 24, 1906.

[55 S. E. 7.]

Sheriffs and Constables—Liabilities—Attachment—Levy on Property of Third Person—Damages—Instruction.—The instruction in an action by the owner of property, wrongfully levied on as the property of another, that the measure of damages in this case is the rental value of the property during the time it was held under the warrant, is erroneous, in excluding from the consideration of the jury evidence that at the time of the levy the property was in storage under a contract for its storage for a year, and that it remained in storage six months after its release from the levy, which tended to show that the owner contemplated no use of the property during the time of the levy, and therefore suffered no loss of use because of the levy.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Sheriffs and Constables, § 307; vol. 5, Cent. Dig. Attachment, § 1379.]

Same—Injury during Levy.—Whether plaintiff, whose property was wrongfully levied on as the property of another, is entitled to recover, as an element of damages, for injury to the property occasioned by its storage during the time of the levy, it having remained such time where it had been stored by plaintiff prior to the levy; depends on the determination by the jury of the conflicting evidence as to whether or not the officer or his agents caused the injury.

Same—Damages to Others than Owner.—Plaintiff's furniture having been in storage when levied on, and having remained there for six months after dissolution of the levy, and the only testimony as to loss of use being that of plaintiff's mother and sister, that "we"